STATE OF DELAWARE
THE COURTS OF THE JUSTICES OF THE PEACE
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LEGAL MEMORANDUM NO. 92-191

TO: ALL JUSTICES OF THE PEACE, STATE OF DELAWARE
ALL CLERKS OF THE COURT, JUSTICE OF THE PEACE COURTS

FROM: WILLIAM F. RICHARDSON
CHIEF MAGISTRATE

DATE: JULY 13, 1992

RE: BAIL GUIDELINE RECOMMENDATIONS

Since its issuance on November 12, 1985, Legal Memorandum No. 85-138, entitled Bail Guideline Recommendations, has provided the primary guidance to our judges in the bail setting process. As intended, it has fostered a uniform approach to this important function of the Justice of the Peace Court. Now, almost seven years later, in our Court's continuing effort to maximize the effectiveness of our role as the front line of Delaware's Judiciary, a review of the Bail Guidelines indicates that some expansion is in order.

In Legal Memorandum No. 85-138, Judge Barron discussed the overcrowded conditions of Delaware's prisons as they existed in 1985. As you know, we are facing the same circumstances in 1992. Our correctional facilities continue to house a large number of pre-trial detentioners, many of whom are charged with having committed relatively minor crimes. In addition, a large segment of

the pre-trial detention population is incarcerated for failure to post comparatively small amounts of bail set by committing Magistrates. In the continuing belief that our limited prison space should be reserved for those dangerous criminals who pose a substantial threat to society, this Memorandum combines the tenets of the current Bail Guidelines with several innovations which will provide a broader spectrum of options for judges to use in setting bail. The availability of the alternatives presented in this Memorandum will help judges to better fashion bail orders to suit the individual and often unique circumstances of defendants while safeguarding victims and minimizing the demand on prison resources.

Delaware's bail statutes are found in Chapter 21 of Title 11 of the Delaware Code. The Code requires that any person arrested and charged with any crime other than a capital offense[1] be released on his or her own recognizance, an unsecured personal appearance bond, or upon the execution of a secured personal appearance bond.[2]

The objectives in setting bail are to reasonably assure the appearance of the accused at future scheduled court

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[1]Murder in the first degree is not always a capital offense, depending on the presence of certain statutory aggravating circumstances (see: 11 Del.C. §4209). However, if the Attorney General's Office represents that the prosecution will be one for capital murder, then the accused should be held without bail as indicated in the bail guideline recommendations. If the State indicates that it will not seek the death penalty or simply makes no representation at all in this regard, then a high secured bail should be set.

[2]11 Del.C. §2104 (a).

proceedings, to reasonably assure the compliance with all conditions of bail and release and to reasonably assure the safety of the victims and the community in general while the defendant awaits trial.[3]

Multiple Offenses

Studies of the pre-trial detentioner population have shown that there is a clear relationship between the number of charges defendants face and their bail amounts. This relationship holds regardless of the severity of the "most serious offense" with which defendants are charged. Judges should be aware of this correlation and realize that defendants facing multiple charges will not necessarily be less likely to appear for scheduled court hearings nor will they necessarily pose a greater threat to the safety of the community than defendants facing a single charge. Note that often a single incident will result in a defendant being charged with multiple offenses. Judges are asked to consider these factors in arriving at the amount of bail or level of supervisory alternative to be set.

Monetary Range

The monetary range of bail recommended for the various offenses defined in Titles 11, 16 and 21 of the Delaware Code has undergone very little change. Of note is the elimination of Class C Misdemeanors and the addition of Class F and G Felonies pursuant

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[3]11 Del.C. §2107 (a).

to the Truth in Sentencing Act.[4] Another change is a redefinition of offenses in conformity with the Delaware Sentencing Accountability Commission (SENTAC) standards as "violent" and "non-violent" as opposed to the previous standards of crimes against "persons" and "property". Offenses that fall within the special SENTAC categories of Domestic Violence and Escape should, for purposes of setting bail only, be treated as "violent" offenses. Offenses that fall within the special SENTAC category of Order and Decency should, for purposes of setting bail only, be treated as "non-violent" offenses.

Enhanced Supervisory Alternatives (ESA)

With the adoption of SENTAC's standards for various levels of non-incarcerative supervision such as the three different levels of probation, house arrest with electronic monitoring and halfway houses, the foundation was laid for the use of these different SENTAC levels for pre-trial detainees as well as sentenced offenders. In addition, the conditions of release found at 11 Del.C. §2108 outlined later in this Memorandum clearly authorize the use of these different options as enhanced supervisory alternatives or ESAs in the bail setting process. Imposition of the various SENTAC levels of supervision through Pre-trial Services will allow judges to better tailor bail orders to the circumstances of individual pre-trial detainees who may require some degree of supervision in order to comply with conditions of

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[4]See Legal Memorandum No. 90-178, Truth In Sentencing, dated September 26, 1990.

bail and to appear for future Court hearings but who otherwise do not need to be incarcerated.

ESAs are intended for use only in those cases where committing Magistrates are satisfied that the imposition of a particular level of pre-trial supervision will result in the desired compliance with bail orders by defendants who do not pose a threat to the safety of the community but who would otherwise be incarcerated in default of secured bail as the sole means of controlling their behavior to achieve the goals for which bail is set.

To use an ESA, the committing Magistrate, having first determined that secured bail is required under the circumstances of the case, may impose the least restrictive ESA up to and including the level of ESA listed in the Bail Guidelines for the lead offense charged. The amount of bail may then be imposed as unsecured rather than secured with a condition of release on bond being compliance with all registration, monitoring and supervisory requirements of Pre-trial Services or the Bureau of Community Corrections for the particular ESA set.

When a defendant is released on unsecured bail subject to compliance with an ESA and the defendant violates a condition of release, judges should first consider increasing the level of ESA rather than automatically revoking the bond and incarcerating the defendant. If, however, it is clear that a more intensive ESA will not assure the defendant's compliance with the conditions imposed

by the Court, the ESAs should not be used and an appropriate amount of secured bail should be set.

Because of the extremely limited nature of Pre-trial Services' resources, ESAs should not be added to bail orders simply as extra "insurance" in cases where defendants' circumstances would otherwise justify unsecured bail or even a small amount of secured bail which is expected to be posted.

When the Court orders a defendant to be placed under Level I, Level II or Level III supervision, the defendant shall sign the attached acknowledgment form (Exhibit 1) at the court before he or she is released. This form along with a copy of the Bond and Order to Appear shall be faxed to the Pre-Trial Services Office in the county in which the defendant is to be supervised.

In order to place a defendant under Level IV house arrest with electronic monitoring, the Court should first either check the Slot Availability System on the Case Management computers or call to determine if one of the ankle bracelets is available. If one is available, then the Court should reserve the ankle bracelet for the accused pending his or her appearance at scheduled court proceedings.

Another Level IV alternative is the halfway house. When this alternative is contemplated, the Court should call to determine if a place is available before imposing it. If a place is available, the Court should reserve that place for the accused pending appearance at the scheduled court proceedings.

Unlike Levels I, II and III which will be monitored by Pre-trial Services, Level IV alternatives will be monitored by DOC's Bureau of Community Corrections. All court orders imposing an ESA should reflect this division of responsibility by specifically referring the pre-trial detainee to the appropriate authority for the level of supervision set.

Day Bail Alternative

The day bail alternative is an adaptation of the European day fine concept to the bail setting process. Day fines are imposed at sentencing with the amount of these fines measured by a given number of days worth of a defendant's income for a given offense. The actual amount of the fine depends on how much income the defendant earns on an average daily basis. Day bail is an amount of money to be posted as bail which is determined by a given number of days worth of a defendant's income for a given charge.[5]

A few jurisdictions in this country are experimenting with day fines at sentencing. However, this effort represents the first time that the day fine concept has been applied as a system to the process of setting bail in the United States. Nevertheless, one need only recognize the basic principles that people should not be incarcerated pending trial solely because they are poor and that

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[5]The day bail alternatives listed in the Bail Guidelines reflect an anticipated average daily income of $40.00 per day. This figure was determined pursuant to a sampling of defendants' income in Justice of the Peace Courts throughout our State. While this figure may operate to the benefit of lower income defendants and to the detriment of higher income defendants, the Court's flexibility provided through the range of each day bail alternative will mitigate this effect.

all defendants should be treated equally regardless of financial means, to realize the logical application of the day fine concept to the bail setting process.

By imposing bail based on a fixed number of days worth of income, depending on the severity of the offense, everyone, regardless of his or her income, will have the same relative incentive to comply with conditions of release and to appear for future court hearings. In this way, a defendant earning $12,000 per year will not be penalized because of his or her financial status. Such a defendant may be released after posting secured bail in an amount which is very significant to him or her, thus securing that person's compliance with any conditions of release, but which may be markedly less than the corresponding amount recommended in the monetary range. In any event, this defendant earning $12,000 per year will have the same incentive to comply with the direction of the Court as a defendant earning $100,000 per year who would have to post a much larger amount of day bail and for whom the corresponding amount of bail recommended in the monetary range may provide little if any incentive to comply with conditions of release.

Obviously, to apply the day bail alternatives, the defendant must be employed and his or her income must be verifiable. Because of this requirement of verification, it is anticipated that day bail will be utilized most often at bail review hearings after Pre-trial Services has completed a verification of the defendant's employment and income and has

submitted this information to the reviewing Court on the Bail Review and Disposition form.[6]

Where Pre-trial Services or the Court itself cannot verify a defendant's income, it is up to the accused to demonstrate, to the satisfaction of the committing Magistrate, the true amount of his or her income before the day bail alternative should be used.[7]

In calculating the amount of day bail to be set, the net amount of 100% of a defendant's total income, regardless of its source, after any demonstrated withholding for Federal, State and local taxes, FICA, wage attachments and payments pursuant to court orders (i.e., alimony, child support, restitution, etc.), should be used to arrive at a daily income amount. This daily amount should reflect the amount of money available to the defendant to post as bail and accordingly should not reflect credit given for mortgage payments, car payments or other such "voluntary" obligations.

Conditions of Bail and Release

An integral part of the bail setting process is the imposition of conditions which may be used to regulate the conduct

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[6]See Policy Directive Nos. 84-084 (Revised), 84-084 (Supplement) and 92-139.

[7]It should be noted here that while day bail alternatives are provided for Title 16 drug offenses, it will normally be extremely difficult for defendants charged with most drug offenses to satisfy the Court as to their true income since income from the sale of illegal drugs is not verifiable. Consequently, it is anticipated that day bail will be used very little in conjunction with Title 16 offenses other than cases of simple Possession.

of defendants while they await trial. Judges may impose whatever conditions they deem reasonable and appropriate according to the unique circumstances of each case. Those conditions may not be imposed as any form of punishment since, in the pre-trial setting, defendants retain the presumption of innocence. However, merely because a given condition is viewed by a defendant as overly burdensome and therefore punitive in nature does not necessarily make it so. A condition of bail may be as creative and restrictive as necessary as long as it is reasonably calculated to assure that the defendant will appear for future court proceedings and that he or she will not represent a threat to the safety and wellbeing of victims, witnesses and members of the community, including the defendant and his or her family.

11 Del.C. §2108 specifically authorizes the Court to impose the following conditions in conjunction with the setting of bail:

> (1) Require the person to return to the court at any time upon notice and submit to the orders and processes of the court.
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> (2) Place the person in the custody of a designated person or organization agreeing to supervise him.
>
> (3) Place the person under the supervision of a presentence or probation officer.
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> (4) Place restriction on the travel, associations, activities, consumption of alcoholic beverages, drugs or barbiturates or place of abode of the person during the period of release.
>
> (5) Require the person to have no contact or restricted contact with the victim, the

victim's family, victim's residence, place of employment, school or location of offense.

(6) Require periodic reports from the person to an appropriate agent or officer of the court, including the attorney for the accused.

(7) Require psychiatric or medical treatment of the person.

(8) Require the person to provide suitable support for his family under supervision of an officer of the court of the Family Court, with the consent of the Family Court.

(9) Require a person who has been convicted to duly prosecute any post-conviction remedies or appeals; and if the case is affirmed or reversed and remanded, such person shall forthwith surrender himself to the court.

(10) Impose any other condition deemed reasonably necessary to assure appearance as required and to carry out the purpose of this chapter.

In addition to the statutory authority outlined above, it has been recognized that Courts also have the authority to fix conditions of bail even when the defendant is not released.[8] Accordingly, it is appropriate in all cases involving a human victim for the Court to order the defendant to have no uninvited contact either directly or indirectly with the victim regardless of

[8] 11 Del.C. §2109 (b).

whether the defendant is released on OR, unsecured or posted secured bail or incarcerated for failure to post secured bail.[9]

Pursuant to the above, the following conditions are suggested as a basic starting point whenever appropriate:

> (1) Defendant is to have no contact, either directly or indirectly, with victims and witnesses.[10]
>
> (2) Defendant shall refrain from all criminal conduct.
>
> (3) Defendant shall not return to the same location where the criminal conduct took place.
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> (4) Defendant shall submit to random drug screenings.

Aggravating and Mitigating Factors

Aggravating and mitigating factors should be considered and should play a primary role in each and every bail determination. You, as the Magistrate performing the bail setting function, are not bound to follow the bail guideline recommendations where mitigating factors favor a lower bail amount or alternative than recommended or where aggravating factors favor a higher bail amount or alternative than recommended. However, absent such mitigating or aggravating factors, you are requested to keep within the bail guideline recommendations. Often, the bail

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[9]In this light, judges should admonish defendants that letters, telephone calls from prison and messages through third parties are all prohibited forms of contact.

[10]This may include a condition that the defendant not return to his or her home if necessary to protect the victim(s).

guideline recommendations provide considerable leeway within each category of offense. Setting the actual bail amount within that category as well as the choice of which alternative is appropriate under the circumstances is entirely within your discretion considering the nature of the offense, the defendant's prior record, the ability to make bail, safety of victims and the community, defendant's likelihood of appearing for future court proceedings, the guidance provided in the narrative of this memorandum and other relevant factors.

With the foregoing in mind, Legal Memorandum No. 85-138, dated November 12, 1985, is hereby rescinded and replaced by this writing. Accordingly, the following bail guideline recommendations are promulgated.

Title 21 Traffic Offenses

a. Driving Under the Influence of Alcohol or Drugs; Reckless Driving; Driving During Suspension or Revocation; Failure to Stop at the Command of a Police Officer:

1. Monetary Range: OR up to $500 unsecured;

2. ESA: none.

3. Day Bail: OR up to 12 days' income unsecured.

b. Other traffic offenses:

1. Monetary Range: OR up to $50 unsecured.

2. ESA: none.

3. Day Bail: OR up to 1 day's income unsecured.

Fugitive Warrants

Look at the crime alleged to have been committed in the requisitioning state. Translate that crime into the most comparable Delaware offense. Find the highest bail guideline recommendation and triple the figure, always making the amount secured.[11] Exception: if the crime is punishable by death or life imprisonment under the laws of the requisitioning state, hold without bail.[12]

When the warrant simply indicates a violation of probation/parole without further information as to the underlying charge for which probation or parole was imposed, set bail, in the ordinary case, at $5,000 secured.

Other Miscellaneous Offenses
OR up to $50 unsecured.

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[11] See: Example No. 6.

[12] 11 Del.C. §2516.

TITLE 11 CRIMINAL OFFENSES

CLASSIFICATION LEAD OFFENSE	MONETARY RANGE	ENHANCED SUPERVISORY ALTERNATIVES	DAY BAIL ALTERNATIVES
Murder 1st Degree	Hold w/o bail	Hold w/o bail alternatives	Hold w/o bail alternatives
Class A Felony	$20,000 - $50,000 secured		500 - 1250 days income
Class B Felony	$10,000 - $30,000 secured		250 - 750 days income
Class C Felony	$2,000 - $10,000 secured		50 - 250 days income
Class D Felony (Violent)	$1,000 - $5,000 secured	Level IV halfway house or electronic monitoring	25 - 125 days income
Class D Felony (Non-Violent)	$1,000 - $5,000 unsecured	Level III supervision Level II supervision	25 - 125 days income unsecured
Class E Felony (Violent)	$500 - $3,000 secured	Level IV halfway house Level IV elect monitor'g Level III supervision	12 - 75 days income secured
Class E Felony (Non-Violent)	$500 - $3,000 unsecured	Level II supervision	12 - 75 days income unsecured
Class F Felony (Violent)	$250 - $1,500 secured	Level IV elect monitor'g Level III supervision	6 - 38 days income secured
Class F Felony (Non-Violent)	$250 - $1,500 unsecured	Level II supervision	6 - 38 days income unsecured
Class G Felony (Violent)	$250 - $1,000 secured	Level III supervision	6 - 25 days income secured
Class G Felony (Non-Violent)	$250 - $1,000 unsecured	Level II supervision	6 - 25 days income unsecured
Class A Misdemeanor (Violent)	$100 - $500 unsecured	Level II supervision	3 - 12 days income unsecured
Class A Misdemeanor (Non-Violent)	OR up to $500 unsecured	None	OR or up to 12 days income unsecured
Class B Misdemeanor	OR up to $100 unsecured	None	OR or up to 3 days income unsecured
Unclassified Misdemeanor	OR up to $50 unsecured	None	OR or up to 1 day income unsecured
Violations	OR up to $25 unsecured	None	OR or up to 1 day income unsecured

TITLE 16 DRUG OFFENSES

	MONETARY RANGE	ENHANCED SUPERVISORY ALTERNATIVES	DAY BAIL ALTERNATIVES*
A. Trafficking in Narcotic or Non-Narcotic Drugs:			
1. Marijuana	$1,000 secured per pound		25 days income per pound
2. Hashish	$1,000 secured per ounce		25 days income per ounce
3. Methamphetamine, amphetamine, phencyclidine and drugs not mentioned above	$1,000 secured per gram		25 days income per gram
4. Cocaine, heroin and other narcotic drugs	$2,000 secured per gram		50 days income per gram
B. Manufacturing, Possession with Intent to Deliver or Delivery of Narcotic or Non-Narcotic Drugs:			
1. Marijuana:			
a. Less than 1 pound	$1,000 - $3,000 unsecured		25-75 days incom unsecured
b. 1 pound or more	$500 secured per pound		10 days income per pound
2. Hashish:			
a. Less than 1 ounce	$1,000 - $3,000 unsecured		25-75 days incom unsecured
b. 1 ounce or more	$500 secured per ounce		10 days income per ounce
3. Cocaine, heroin, methamphetamine, amphetamine, phencyclidine and other narcotic or non-narcotic drugs not mentioned above	$5,000 secured or secured bail in the amount of the street value of the drugs, whichever is greater		125 days income or the street value of the drugs, whichever is greater
C. Possession of Narcotic Drugs:			
1. First offense	$500 - $1,000 unsecured	Level II supervision	12-25 days incom
2. Defendant has prior Title 16 convictions	$500 - $1,000 secured	Level II supervision	6-25 days income
D. Possession of Non-Narcotic Drugs	$500 - $1,000 unsecured		12-25 days incom
E. Other Drug Charges	$500 - $1,000 unsecured		12-25 days incom

*where the Day Bail Alternative is less than the street value of the drugs, bail should be set in an amount equal to the street value of the drugs.

AGGRAVATING FACTORS

An unsecured bail guideline recommendation may, in the ordinary case, be converted to a secured bail amount whenever any one of the following non-exclusive[13] aggravating factors is present:

1. Two or more capiases for failure to appear have been issued for the defendant within three years from the date of the instant offense and none resulted in the defendant's voluntary surrender to the issuing authority. (Every effort should be made to obtain the records from other Courts concerning capiases issued for the defendant.)

2. The defendant has shown a tendency toward repetitive criminal conduct, to wit:

   a. the defendant has been twice or more convicted of committing the same violent offense as the instant offense within five years preceding the date of the instant offense during which the defendant was not incarcerated, or

   b. the defendant has three times or more been convicted of the same non-violent offense within three years from the date of the instant offense.

3. the defendant's prior criminal record consists of at least two felony convictions, or at least four misdemeanor convictions excluding Title 21 traffic convictions within the past three years.

4. The defendant has shown a lack of amenability to less restrictive measures through violation of a prior period of probation or a failure to meet substantive conditions during a prior or current period of probation.

5. The defendant was on a conditional release status from the Department of Correction on the date of the instant offense.

6. Defendant was on bail, either having posted a secured bail or having been released on unsecured bail or on the defendant's own recognizance, at the time of the commission of a new offense.[14]

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[13]Both the aggravating and mitigating factors listed herein are provided as examples and are not intended to be exclusive reasons justifying departures from the bail guidelines.

[14]If a defendant is charged with committing a subsequent offense while on bail for having committed a prior offense, especially a violent offense, Justices of the Peace are encouraged

7. The prosecutor or police officer proffers facts to the Court which demonstrate that the defendant was aware before his arrest that the charge or charges for which bail is to be set had been filed and thereafter the defendant intentionally attempted to evade arrest on such charge or charges.

8. A fugitive's warrant has been issued against the defendant or he or she is a prison deserter from the military.[15]

9. The offense was allegedly committed against a victim who is considered to be helpless or defenseless; i.e., the victim is very young or very old, either physically or mentally handicapped, etc.

10. The defendant is a non-resident and at least one other factor exists which makes it unlikely, in the Court's view, that the defendant will appear for future court proceedings without secured bail being set.

11. The crime was committed for the purpose of avoiding or preventing an arrest or for the purpose of effecting an escape from custody.

12. The crime was committed against a person who was a witness to a crime for the purpose of preventing that witness's appearance or testimony in any grand jury, criminal or civil proceeding.

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to set bail in a high secured amount as the circumstances of each individual case may justify.

[15]See: Legal Memorandum No. 81-75.

MITIGATING FACTORS

A secured bail guideline recommendation may, in the ordinary case, be converted to an unsecured bail whenever any one of the following non-exclusive mitigating factors is present:

1. The defendant has demonstrated through recent behavior that it is likely that he or she will appear at scheduled court dates, obey court orders and will not endanger victims, witnesses or the public in general.

2. The defendant has ties to the community which suggest that he or she is unlikely to flee prior to scheduled court dates. Such factors include a stable job and family ties to the community.

3. The defendant's record shows no prior criminal convictions, excluding Title 21 traffic violations.[16]

4. To a significant degree, the victim was an initiator, willing participant, aggressor or provoker of the incident.

5. Before detection, the defendant compensated or made a good faith effort to compensate the victim of the criminal conduct for any damage or injury sustained or, before detection, the defendant sought professional help for drug/alcohol treatment or any other recognized compulsive behavioral disorders related to the offense.

6. The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

7. The defendant, because of physical or mental impairment, lacked substantial capacity for judgment when the offense was committed. The voluntary use of intoxicants (drugs or alcohol) does not fall within the purview of this factor.

8. The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or wellbeing of the victim.

9. The defendant has or is willing to cooperate with the police with regard to an ongoing investigation and the police or prosecution requests low or unsecured bail because of this fact.

10. The defendant entertains an honest and reasonable belief that his or her actions causing arrest were justifiable and legal.

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[16]Numerous convictions for Driving Under the Influence, Driving During Suspension or Revocation and Failure to Stop at the Command of a Police Officer should <u>not</u> be excluded from consideration of the defendant's prior convictions.

Remember, when secured bail is set, the reasons for setting secured bail must be indicated in the record.[17] You will note that the bail guideline recommendations place strong emphasis on the nature of the offense and the safety of the community in determining the appropriateness of setting secured bail.[18] This emphasis explains the high secured bail recommendations for serious violent felonies and the unsecured bail recommendations for most other offenses.[19] Nevertheless, judges should not lose sight of the primary focus of the bail setting process. That is, is the bail or alternative being imposed sufficient to secure the defendant's appearance at subsequent court proceedings while providing the necessary incentive to the defendant to comply with all conditions imposed by the Court, including those pertaining to the safety of victims and the community in general? In this light, the following examples are offered:

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[17]11 Del.C. §2105 (c).

[18]See: 11 Del.C. §2101, et. seq. As an example of the importance of these factors as recognized by the United States Congress, see 18 United States Code, Section 3142 (e) which creates a presumption that no combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if there is probable cause to believe that the person has committed a drug offense punishable by ten years or more of imprisonment.

[19]In deciding between secured and unsecured bail, remember that under no circumstances should secured bail ever be set for Violations. See: Legal Memorandum 83-111, Incarceration of Persons For Non-Incarcerable Offenses.

Example No. 1

Defendant's prior record consists of a Theft (M) conviction and a Burglary 3rd conviction. Defendant is presently charged with Possession of a deadly weapon by a person prohibited, a non-violent class F felony.

Monetary Range: $250 to $1,500 unsecured.

Day Bail: 6-38 days' income.

Bail Determination: There is no reason to deviate from the monetary range recommendation in this case. Thus, bail set in the amount of $1,000 unsecured would not be inappropriate since it falls within the recommended range. An ESA would not be imposed because the recommended bail is unsecured. Day bail may be used but since bail is to be unsecured, there is no need to go through the process of income verification and the calculation of day bail in this case.

Example No. 2

Same facts as Example No. 1, except that now the record reflects that the defendant was on supervised custody with regard to a prior Burglary conviction when the instant offense was committed.

Monetary Range: $250 to $1,500 unsecured.

ESA: Level II.

Day Bail: 6 to 38 days' income unsecured.

Bail Determination: Because the defendant was on supervised custody at the time the instant offense was committed, reasonable grounds exist for deviating from the bail guideline

recommendation. Thus, bail set in the amount of $1,000 secured would not be inappropriate. (See: Aggravating factor no. 5). If secured bail is to be set, an ESA up to and including Level II supervision may be imposed whereupon the bail set would revert to unsecured instead of secured. Day bail of 25 days' income secured may be used if the defendant is regularly employed on a full time basis.

Example No. 3

Defendant's prior record consists of three prior Shoplifting misdemeanors within the past three years. Defendant is presently charged with Shoplifting merchandise valued in excess of $500, a non-violent class G felony.

Monetary Range: $250 to $1,000 unsecured.

ESA: Level II.

Day Bail: 6 to 25 days' income unsecured.

Bail Determination: The three prior Shoplifting charges, although misdemeanors, may be considered as essentially the same offenses as the instant offense. The judge may wish to deviate from the guidelines in such a case. Thus, bail in the amount of $300 secured would not be considered inappropriate. (See: Aggravating factor no. 2.) If bail is to be secured, an ESA of up to and including Level II supervision may be imposed whereupon the bail would revert to unsecured from secured. Under these circumstances, conditions of release should include a restriction that the defendant not return to the store where the shoplifting allegedly occurred.

Example No. 4

Defendant's prior record consists of an Assault 2nd degree conviction. Defendant is presently charged with committing Assault 3rd degree, a violent class A misdemeanor.

Monetary Range: $100 to $500 unsecured.

ESA: Level II.

Day Bail: 3 to 12 days' income unsecured.

Bail Determination: OR up to $500 unsecured. Since there are no aggravating or mitigating factors present, bail in the amount of $500 unsecured would not be inappropriate. Here again because bail is unsecured, there is no need to impose an ESA or day bail.

Example No. 5

Same facts as Example No. 4, except that the defendant is a resident of New Jersey and is unemployed. As a result, the Court feels that it is unlikely that the defendant will appear at future court proceedings under an unsecured bond.

Monetary Range: $100 to $500 unsecured.

ESA: Level II.

Day Bail: 3 to 12 days' income.

Bail Determination: Because of the residence status and lack of visible means of support, the judge finds it unlikely that the defendant will appear for future court proceedings without secured bail being set. Therefore, the Court may well wish to deviate from the guideline recommendations and set bail in the amount of, for example, $300 secured. A Level II ESA may not be

appropriate if the defendant does not have a place to stay in Delaware where he or she can be monitored by Pre-trial Services or if the Court feels that release without posting cash will result in the defendant's flight. Day bail of 7 to 8 days' income secured would not be inappropriate.

Example No. 6

Defendant is charged by way of a fugitive's warrant with Interference with Custody, a felony charge in the State of Alabama, which is the requisitioning State. Defendant has no prior record. Facts gleaned from the papers indicate that the defendant is the father of the child whose custody was given to the mother as a result of an Alabama Family Court decree.

Monetary Range: Minimum of $3,000 secured.

ESA: None.

Day Bail: Minimum of 75 days' income secured.

Bail Determination: The most comparable charge in Delaware to Alabama's Interference with Custody statute is 11 Del.C. §785, Interference with Custody, a class G felony when the person who interferes with the custody of a child thereafter causes the removal of said child from Delaware. The normal recommended monetary range of bail for a class G felony in the special Domestic Violence category and therefore considered violent for purposes of setting bail is from $250 to $1,000 secured. Because of the fugitive warrant, the highest monetary range recommendation, $1,000, should be tripled to $3,000 and set as secured bail. If, however, the judge feels that this amount of secured bail is

insufficient to prevent this defendant from fleeing, a higher amount of secured bail, better reflecting the circumstances of the defendant, should be set by again tripling the amount previously arrived at, until an amount is settled upon which is satisfactory to the Court. An ESA is not appropriate in this case since the defendant has demonstrated his propensity to flee by the very nature of the charge. Day bail of 75 days' income secured would not be inappropriate (25 days' income x 3).

Example No. 7

Defendant's prior record consists of one prior DUI conviction in Pennsylvania which occurred in 1988. The defendant, a resident of Pennsylvania who has been employed in a responsible position with the First Bank of Philadelphia for the last ten years, is charged with DUI.

Monetary Range: OR up to $500 unsecured.

ESA: None.

Day Bail: OR up to 12 days' income unsecured.

Bail Determination: Even though the defendant is a non-resident, the accused's employment status makes it likely that he or she will appear for future court proceedings without secured bail being set. Thus, bail set in the amount of $500 unsecured would not be inappropriate. Since this is a motor vehicle charge and since bail is unsecured, there is no ESA and no reason to calculate day bail.

Example No. 8

Same facts as in Example No. 7, except that defendant's record reflects three prior DUI convictions within the past three years.

Monetary Range: OR up to $500 unsecured.

ESA: None.

Day Bail: OR up to 12 days' unsecured.

Bail Determination: Because of the defendant's three prior DUI convictions, reasonable grounds exist for deviating from the recommended guidelines. Accordingly, bail set in the amount of $500 secured or day bail of twelve days' income, secured, would not be inappropriate. See: Aggravating factor no. 2(b).

Example No. 9

Defendant, a female with no prior record, is charged with Burglary 1st degree, a class C violent felony and Theft of property valued in excess of $500, a non-violent class G felony. The probable cause affidavit indicates that she had lived with the victim, her former boyfriend, in the apartment allegedly burglarized. At her initial appearance, she contends that she was simply trying to recover her fur coat, given to her by the victim, which she left in the apartment when the victim kicked her out. She had entered the apartment at night through an open rear door. Police recovered the fur coat from the defendant at the time of her arrest. No other property was taken from the apartment.

Monetary Range: Burglary 1st degree - $2,000 to $10,000 secured. Theft (felony) - $250 to $1,000 unsecured.

ESA: Burglary 1st degree - none. Theft (felony) - up to and including Level II.

Day Bail: Burglary 1st degree - 50 to 250 days' income secured. Theft (felony) - 6 to 25 days' income unsecured.

Bail Determination: Mitigating factors exist which support a deviation from the class C felony bail guidelines. Thus, bail set in the amount of $4,000 unsecured on the Burglary 1st degree charge would not be inappropriate. (See: Mitigating factor no. 10.) The bail guideline recommendation for the Theft (felony) charge should be followed. Thus, bail set in the amount of $1,000 unsecured for the Theft (felony) charge would not be inappropriate. Since no secured bail is to be set, an ESA should not be used in this case. Day bail may be used but since bail is to be unsecured, there is no need to go through the process of verification of income and calculation of day bail in this case. The monetary range works well alone here.

Example No. 10

Defendant has no prior record. He is charged with Unlawful Sexual Contact 2nd degree, a class G violent felony. The victim is a four year old girl. It is alleged that the defendant, an employee of a child day care center, fondled the victim's genital area while the victim was under his control and custody. There was an alleged eyewitness to the incident.

Monetary Range: $250 to $1,000 secured.

ESA: Level III.

Day Bail: 6 to 25 days' income secured.

Bail Determination: Because of the nature of the offense and the tender age of the victim, not to mention the defendant's position of trust, a deviation from the bail guideline recommendation is indicated. Thus, bail set in the amount of $3,000 secured or day bail in a corresponding amount of 75 days' income secured would not be inappropriate. Since the bail is secured, the judge may consider imposing an ESA of up to and including Level III and reducing the bail to unsecured. A no contact order is imperative in this case.

Example No. 11

Defendant is charged with Reckless Driving, Failure to Stop at the Command of a Police Officer, Reckless Endangering 2nd degree, Speeding, 85 mph in a 35 mph zone and Running a Stop Sign. The defendant's prior record consists of a Burglary 2nd degree conviction. The probable cause affidavit supporting the Reckless Endangering charge indicates a six mile high speed police chase involving four police vehicles. The defendant is an 18 year old high school senior.

Monetary Range: Total - OR up to $1,600 unsecured.

ESA: None.

Day Bail: Total - OR up to 40 days' income unsecured.

Bail Determination: Because of the totality of the circumstances surrounding the five charges, all pertaining to a high speed police chase, reasonable grounds exist for deviating from the total bail guideline recommendations. Remember, the list of aggravating factors outlined in this memorandum is not an

exclusive list. Other aggravating factors, such as those evident here, may be considered in setting bail outside the guideline recommendations. Thus, bail set in the following amounts may not be unreasonable:

Reckless Driving:	$ 500 secured
Failure to Stop at Command:	500 secured
Reckless Endangering 2nd:	500 secured
Speeding:	50 secured
Running a Stop Sign:	50 secured
Total:	$1,600 secured

However, in deviating from the bail guideline recommendations, it is also important for judges not to lose sight of the purpose for which bail is set. In this example, a defendant who can post $500 cash bail and for whom that amount will secure his or her appearance at future court proceedings and compliance with any conditions of release should not be placed under the higher total $1,600 secured bail amount unless absolutely necessary to guarantee public safety. If secured bail is deemed appropriate and the defendant is unable to post it or the day bail equivalent, the judge may wish to further deviate from the guidelines by imposing an ESA of Level I or II, which is not normally authorized for motor vehicle offenses. This ESA exception for motor vehicle cases is to be used sparingly and only when the release on unsecured bail will not jeopardize public safety.

Example No. 12

Defendant with no prior record is charged with possessing five vials containing a total of 4-3/4 grams of crack cocaine with the intent to deliver same. The street value of the drugs is $90.

Monetary Range: $5,000 secured.

ESA: None

Day Bail: 125 days' income secured.

Bail Determination: The bail guideline formula for determining bail for one charged with possession with intent to deliver cocaine is the street value of the drugs or $5,000 whichever is greater. Thus, bail set at $5,000 secured is appropriate. Because of the possible sale of drugs by the accused, day bail will not be used in this case since income from drug sales is not verifiable. If the defendant is released on bond, one of the conditions of release should be that the defendant not return to the street corner or particular area of the neighborhood where the offense was allegedly committed.

* * * *

In light of the bail guidelines and alternatives, the use of ten percent bail is strongly discouraged. If it is used at all, it should be used only in those cases where mitigating factors have been found to exist, thus warranting a lower bail than recommended by the guidelines.

Legal Memorandum No. 85-138, dated November 12, 1985, is hereby rescinded and replaced by this writing. The bail guideline

recommendations contained herein are effective upon receipt of this Legal Memorandum.

WFR:jp

cc: The Honorable E. Norman Veasey
The Honorable William T. Allen
The Honorable Henry duPont Ridgely
The Honorable Vincent J. Poppiti
The Honorable Robert H. Wahl
The Honorable Alfred R. Fraczkowski
The Honorable Thomas B. Ferry
The Honorable Charles M. Oberly, III
Lawrence M. Sullivan, Esq.
Robert J. Watson
Henry Risley
Joseph Paesani
Goerge Hawthorne
Harold E. Stafford
Eugene M. Hall, Esq.
Keith Brady, Esq.
Sam McKeeman
Carl Schnee, Esq.
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Anna A. Lewis
Law Libraries: New Castle, Kent and Sussex Counties
File LM92-191

STATE OF DELAWARE
DEPARTMENT OF CORRECTION
BUREAU OF ADULT CORRECTION
MULTI-PURPOSE CRIMINAL JUSTICE FACILITY
P O BOX 9279
WILMINGTON, DELAWARE 19809
TELEPHONE: (302) 429 - 7700

OFFICE OF PRETRIAL SERVICES

DATE: _____

Name: _____ Charge(s): _____

Address: _____ _____

_____ _____ Court _____

Phone: _____ Bail: _____

I, _____, have been placed under supervision of the Office of Pretrial Services in complaince with Title 11, Section 2108 of the Delaware Code. I understand that it is my responsibility to comply with the following conditions of my bond:

1. Contact Mr. Tony Degal, Pretrial Services, located at 1601 N. Pine Street, Wilmington, DE, 302-577-3443, immediately, between the hours of 8:00 A.M. and 4:00 P.M.

2. Report in person to Mr. Degal, or designated person, on a weekly basis.

3.

4.

5.

6.

Failure to comply with any of the above-mentioned conditions may result in an additional charge and penalty as described in Title 11, Section 2113 of the Delaware Code.

Defendant: _____

Witness: _____

/klp

Exhibit 1

STATE OF DELAWARE
THE COURTS OF THE JUSTICES OF THE PEACE
820 NORTH FRENCH STREET, 11TH FLOOR
WILMINGTON, DELAWARE 19801

PATRICIA WALTHER GRIFFIN
CHIEF MAGISTRATE

TELEPHONE: (302) 577 - 6001

LEGAL MEMORANDUM 92-191 (SUPPLEMENT)

Rescinded 9-4-03

TO: **ALL JUSTICES OF THE PEACE**

FROM: **PATRICIA W. GRIFFIN**
CHIEF MAGISTRATE PWG

DATE: **MAY 11, 1994**

RE: **SCREENING CRITERIA FOR DOMESTIC VIOLENCE CASES**

Chief Magistrate Legal Memorandum 85-138, dated November 12, 1988, and Legal Memorandum 92-191, dated July 13, 1992, provide guidance to Justices of the Peace in the bail setting process. This memorandum is intended to supplement those memoranda in connection with the determination of bail in cases involving domestic violence.

As you well know, Justices of the Peace and other judicial officers struggle on a daily basis with performing risk assessments in domestic violence cases for the purpose of determining bail and the conditions of bail. The Family Court has developed the attached screening criteria, which are presently being used in determining whether the petitioner in a Protection from Abuse

Act proceeding may be in "immediate and present danger" as required by the Act to justify an expedited, emergency hearing. I have requested that the Courts Subcommittee of the Domestic Violence Coordinating Council address risk assessments in domestic violence cases as they relate to the Justice of the Peace Courts.

For purposes of this memo, the following definition of family/ domestic violence (which has been adopted by the Attorney General's office) shall be utilized:

> [T]he defendant or victim in a family violence case may be male or female, child or adult, or may be of the same sex. Family violence is any criminal offense or violation involving the threat of physical injury or harm; act of physical injury; homicide; sexual contact, penetration or intercourse; property damage; intimidation; endangerment; and unlawful restraint. The victim and defendant may be family members (10 Del.C. Section 901(a)), ex-husband/wife, intimate cohabitants or former intimate cohabitants, boyfriend and girlfriend or ex-boyfriend and girlfriend. Family violence shall also include the above criminal offenses and violations in which the defendant victimizes another individual who has a relationship with the defendant's significant other.

It is critical that each case involving domestic violence be carefully reviewed as a part of the bail determination process, to determine, based on the information available, the immediate danger to the victim. Until additional assistance is available, Justices of the Peace shall use the attached screening

criteria, in conjunction with the recommended bail guidelines, in making bail determinations in domestic violence cases.

Previous Chief Magistrate Legal Memoranda on the determination of bail stated that magistrates "are not bound to follow the bail guideline recommendation should mitigating factors favor a lower bail amount than recommended or should aggravating factors favor a higher bail amount than recommended." Chief Magistrate Legal Memorandum 85-138, at 2. Clearly, the judicial officer setting bail must rely on the Judge's own discretion in making the bail determination, based on the information available. The existence of aggravating factors can demonstrate that the appropriate bail amount is significantly higher than the instant offense would indicate under the recommended bail guidelines, and that secured or cash (meaning "money" only) bail is proper, even though the recommended bail guidelines indicate that unsecured bail is recommended. (Those guidelines are based on "typical" cases, so consideration must be given to aggravating and mitigating factors which take the case outside of the recommended bail guidelines.)

The following aggravating factor is added to the non-exclusive list of aggravating factors provided by Judge Barron in his Legal Memorandum 85-138:

10. The instant case before the Court involves domestic violence and the evidence available to the Court indicates that the victim may be in immediate and present danger from the defendant.

The first step in the process of determining whether the victim may be in immediate and present danger from the defendant is to review and attempt to obtain answers to the questions set forth in the attached screening criteria. Responses to the questions may be obtained from any and all sources available to a Justice of the Peace -- the police officer who investigated the domestic violence complaint, the victim (if the victim comes to the court at the time of the bail hearing or to file the complaint), the defendant/respondent, the defendant's criminal history[1], and any other person who is available and has pertinent information. Police officers who have investigated the charge against the defendant are strongly encouraged to obtain as much information as possible related to the screening criteria from the victim and to provide that information to the court. [It has been a long-standing policy of the Justice of the Peace Courts that police should be involved to assist the victim in family domestic violence cases. See Chief Magistrate Policy Directive 83-072 (Supplement), dated September 12, 1984.]

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[1] As stated by Judge Barron, "[t]he importance in obtaining the defendant's criminal history cannot be over-emphasized." Legal Memorandum 85-138, at 5, fn 7.

If there are any of the screening criteria present (if the answers to any of the questions are "yes"), then a "red flag" should go up and careful consideration should be given to all information available to the magistrate to determine if the victim appears to be in immediate danger from the defendant. It appears that the more specific considerations which are present (the more "yes" responses to the screening criteria), the more likely the risk to the victim. Clearly, evidence of previous threats of homicide or bodily harm by the defendant against the victim indicates a strong likelihood that the victim may be in immediate danger from the defendant.

As you all know, information presently available to assist Justices of the Peace in performing comprehensive risk assessments in domestic violence cases is severely limited. Given that incarcerated defendants will appear in either the Family Court or the Court of Common Pleas (where additional information is available) within a short period of time, Justices of the Peace should give careful consideration in setting bail to the possibility of immediate danger to the victim from the defendant.

With regard to making bail determinations for violations of Family Court protective orders, you should follow the policies set forth in Chief Magistrate Policy Directive 94-144, dated February 4, 1994. [The bail

guideline recommendation for a violation of an existing protective order is $1,000 cash bail, absent aggravating or mitigating factors. (Cash bail means that amount in money only.) The need to set a higher cash bail should be carefully considered where aggravating factors are present, including previous violations of protection orders and/or evidence of immediate danger to victim from the defendant.]

This memorandum is intended to begin the process of developing a risk assessment tool for use by the Justices of the Peace in making bail determinations in domestic violence cases. I would appreciate your suggestions on additional screening criteria based on your experiences on the bench, as well as any other comments related to this issue.

PWG:lba
Attachment.

cc: The Honorable E. Norman Veasey
The Honorable Andrew G.T. Moore, II
The Honorable Henry duPont Ridgely
The Honorable Vincent J. Poppiti
The Honorable Arthur F. DiSabatino
The Honorable Alfred Fraczkowski
The Honorable Charles M. Oberly, III
Lawrence M. Sullivan, Esquire, PD
Thomas W. Nagle
Anna A. Lewis
H. John Betts
Justice of the Peace Clerks of Court
All Police Agencies

Alderman's Court
Law Libraries: New Castle County, Kent County, Sussex County & Widener University School of Law
Digilaw, Inc.

DOMESTIC VIOLENCE SCREENING CRITERIA

Specific Considerations:

-- Has the Defendant threatened homicide or serious physical or sexual abuse to the Petitioner and/or Petitioner's children and is there reason to believe that the Defendant is able to carry out that threat (e.g., past incidents of violence, weapons in the Defendant's possession, drug use)?

-- Does the Defendant have a history of alcohol or drug use? [Although alcohol and drug use typically does not cause the violence, they both act as deinhibitors that may result in an escalation of the level of violence.]

-- Does the Defendant have access to a firearm or other weapon (including any history of arson)?

-- Does the Defendant appear to be out of control or acting without regard to consequences?

-- Is the Petitioner pregnant? [Domestic violence often escalates during pregnancy.]

-- Has the Defendant very recently killed or injured a pet?

-- Does the Defendant have a history of depression or mental illness?

-- Has the Defendant threatened or attempted suicide? [Batterers in seriously abusive relationships may seek to kill their partner or their children at the time they kill themselves.]

-- Has the Petitioner recently ended the relationship or left the Defendant or does the Defendant refuse to accept that the relationship with Petitioner is over? [Domestic violence often escalates at the time of separation and most domestic violence murders or murder/suicides occur after the victim has tried to leave the relationship.]

-- Have there been prior violations of court orders (protective orders or no contact orders)? [Repeated violations of court orders indicate that no contact orders are ineffective.]

General Considerations:

-- Is there a history of domestic violence between the Defendant and victim or between Defendant and other domestic partners?

-- Is the violence between the couple escalating?

-- Is there evidence of prior violent criminal offenses committed by Defendant?

PWG:lba
05/11/94

STATE OF DELAWARE
THE COURTS OF THE JUSTICES OF THE PEACE
820 NORTH FRENCH STREET, 11TH FLOOR
WILMINGTON, DELAWARE 19801

PATRICIA WALTHER GRIFFIN
CHIEF MAGISTRATE

TELEPHONE: (302) 577 - 6001

LEGAL MEMORANDUM 92-191 (2nd SUPPLEMENT)

TO: **ALL JUSTICES OF THE PEACE**
STATE OF DELAWARE

FROM: **PATRICIA W. GRIFFIN** PWG
CHIEF MAGISTRATE

DATE: **July 26, 1994**

RE: **PRE-TRIAL DETENTION OF A JUVENILE**

This memorandum is intended to supplement earlier legal memoranda providing guidance on bail considerations and addresses considerations related to the pre-trial detention of a juvenile. See Chief Magistrate Legal Memorandum 83-111, Incarceration of Persons for Non-Incarcerable Offenses, dated June 10, 1983; Legal Memorandum 81-79, Bail Considerations, dated December 10, 1981; Legal Memorandum 85-138, Bail Guideline Recommendations, dated November 12, 1985, and its Supplement, Bail Guidelines for Justice of the Peace Court Capiases, dated August 31, 1987; Legal Memorandum 92-191, Bail Guideline Recommendations, dated July 13, 1992, and its Supplement, Screening Criteria for Domestic Violence Cases,

dated May 11, 1994.

A specific question has arisen concerning whether it is appropriate to order a juvenile detained in a secure facility when the offense charged is punishable by fine only. First, I will review the statutory requirements for detaining a juvenile under any circumstances. Second, I will review constitutional and other considerations applicable to the detention of a juvenile for a non-jailable offense. Finally, I will review alternatives to pre-trial detention in a secure facility, including non-secure detention alternatives established by the Department of Services for Children, Youth and Their Families.

Statutory Requirements for Pre-Trial Detention of Juveniles

The Delaware Constitution and statutory provisions preclude the setting of oppressive bail and mandate that the Court set "such bail as reasonably will assure the reappearance of the accused, compliance with the conditions set forth in the bond and the safety of the community." Del. Const. of 1987, Art. I, 11; 11 Del.C. § 2107(a). Only capital crimes, or those offenses punishable by death, are not bailable in the Justice of the Peace Court. 11 Del.C. § 2103(a). Presently, only Murder in the First Degree, 11 Del.C. § 636, is punishable by death.

There are separate statutory considerations, however, for making a decision on the disposition of a juvenile charged with a delinquent act. Family Court has exclusive jurisdiction over delinquent children under most circumstances.[1] When Family Court is not in session, however, children charged with delinquent acts may be brought before a justice of the peace. 10 Del.C. § 934. In addition, section 704(a) of Title 10 of the Delaware Code provides that Justices of the Peace have jurisdiction over children 16 years of age or older who have violated Title 21 of the Delaware Code, except with regard to motor vehicle violations set forth in 10 Del.C. § 927 (which are under the exclusive jurisdiction of the Family Court) or committed in conjunction with motor vehicle violation charges under Family Court jurisdiction. Section 704(d) of Title 10 provides that statutory considerations for making a decision on the disposition of a juvenile offender charged with a delinquent act are also applicable for offenders over whom Justices of the Peace have jurisdiction pursuant to 10 Del.C. § 704(a).

Pursuant to 10 Del.C. § 934, the justice of the peace has the

---

[1] A delinquent child is a child who commits an act which would constitute a crime if committed by an adult. 10 Del.C. § 901(7). Family Court's jurisdiction over allegedly delinquent children does not include juveniles charged with murder in the first and second degree, rape, unlawful sexual intercourse in the first degree and kidnapping, who are under the jurisdiction of Superior Court.

authority to take the following actions:

1. Release the child on his or her own recognizance, or on that of the person responsible for the child, to appear before the Family Court at a later date;

2. Require the child to furnish "reasonable cash or property bail or other surety for her or his appearance in Court";

3. Order the child detained in a secure detention facility operated by the Department of Services for Children, Youth and Their Families, only if the Justice of the Peace makes the following findings:

   (a) that there is no less restrictive means of giving "reasonable assurance that the child will attend the adjudicatory hearing" after giving consideration to the alternatives set forth in 10 Del.C. § 936A(b)(5), which are releasing the child: on the child's own recognizance; to the parents, guardian or custodian; on bail; with the imposition of restrictions on activities, associations, movements and residence reasonably related to securing the appearance of the child at the next hearing; and to a nonsecure detention alternative developed by the Department of Services for Children, Youth and Their Families such as home detention, daily monitoring, intensive home base services with supervision, foster placement or a nonsecure residential setting; and

   (b) that one of the following factors exist:

      (i) the child is a fugitive from another jurisdiction on a delinquency petition;

      (ii) the child is charged with an offense which, if committed by an adult would constitute a felony, or with assault in the third degree, unlawful

imprisonment in the second degree, vehicular assault in the first degree, indecent exposure in the first degree, unlawful sexual contact in the first degree or carrying a concealed dangerous instrument; or

(iii) the child has demonstrated a pattern of repeated failure to comply with court-ordered placement in a out-of-home residential or foster care setting.

10 Del.C. § 936A(a). To order a juvenile to a secure detention facility, the court must find that both (a) and (b) exist and substantiate those findings in writing. 10 Del.C. § 936A(c). Any detention of a juvenile in a secured facility by a Justice of the Peace may continue only until the next session of the Family Court. 10 Del.C. § 934. A checklist summarizing these requirements is attached for your convenience and may be completed in compliance with the writing requirement set forth in 10 Del.C. § 936A(c).

Constitutional Implications of Incarcerating a Juvenile for a Non-jailable Offense

The constitutional issues surrounding the propriety of the pre-trial detention of an individual for a non-incarcerable offense are discussed in Chief Magistrate Legal Memorandum 83-111, dated June 10, 1983, and a subsequent memorandum dated June 11, 1984 (a copy of which is attached for your information). This issue was addressed by the 4th Circuit in the context of a 42

U.S.C. § 1983 action against a Virginia magistrate for incarcerating an individual who was charged with an offense punishable by fine only. Allen v. Burke and Pulliam, 690 F.2d 376 (4th Cir. 1982), aff. 104 S.Ct. 1970 (1984). As Judge Barron's memorandum stated, the U.S. District Court for the Eastern District of Virginia required the magistrate to pay the attorneys' fees for two individuals whom she held incarcerated for non-jailable offenses "solely because of their inability to make bail." 104 S.Ct. at 1973, n.2. Although it did not directly review the constitutionality issue (of incarcerating individuals for non-jailable offenses), the United States Supreme Court held that judicial immunity does not bar the award of attorney's fees pursuant to 42 U.S.C. § 1988 (and injunctive relief) against judges acting in their judicial capacity. However, in a footnote, the U.S. Supreme Court specified that the practice of the magistrate enjoined by the lower court was the incarceration of persons prior to trial on offenses for which no jail time is authorized "solely because they cannot meet bond." Id. Further, the Supreme Court noted that the lower court concluded that the individuals in the instant case had been detained "solely because of their inability to make bail," and that pretrial detentions for persons charged with minor misdemeanor offenses on the grounds that the

> person is lawfully deemed likely to be a danger to himself or to others may last only so long as such

> danger persists and must cease when the condition which created the danger changes or abates, or arrangements are made for release of the person into third-party custody under circumstances which abate the danger.

Id. The constitutionality issue was addressed more recently by the West Virginia Supreme Court in Robertson v. Goldman, W.V. Supr., 369 S.E.2d 888 (1988). The West Virginia Supreme Court concluded that jailing an indigent charged with an offense which did not carry the penalty of incarceration, solely because he was unable to post bond, violated the equal protection clause of the United States and West Virginia Constitutions. Id. at 892. It relied on several United States Supreme Court cases, Williams v. Illinois, 90 S.Ct. 2018, 2023 (1970) (holding it was unconstitutional to hold a prisoner longer than his maximum sentence because they were financially unable to pay the fine or court cost); Tate v. Short, 91 S.Ct. 668 (1971) (holding that incarcerating a defendant convicted of an offense which did not otherwise carry a jail term because he was unable to pay the fine was unconstitutional); Griffin v. Illinois, 76 S.Ct. 585 (1956)(requiring trial transcripts be provided to indigent criminal appellants).

In conclusion, Justices of the Peace are not immune from fee awards in cases involving constitutional violations committed by them and, as

evidenced by the Pulliam case, the awards against a judge can be significant. I concur in Judge Barron's recommendation in Legal Memorandum 83-111 that you should not incarcerate defendants -- juveniles or adults -- for the failure to make bail on a non-jailable offense if at all possible.[2] [In consideration of this issue, it does not matter whether the offense was committed by a juvenile or adult since constitutional protections apply to both juveniles and adults.] As a consequence, I suggest you utilize the alternatives I discuss below prior to ordering a juvenile into a secure detention facility.

Alternatives to Secure Detention

I recognize that most difficulties arise when an intoxicated juvenile (whose parents are out-of-state) is arrested for a non-incarcerable offense on a Friday or Saturday night. The following suggestions relate to that situation:

1. Issuance of Criminal Summons by Police Agencies - Section 933 of Title 10 of the Delaware Code authorizes a police officer to take a child into custody whom they believe is delinquent. A police officer, however, is not required to take a child into custody; once they do take the child into custody, they must immediately try to notify the child's custodian. If the child's custodian either refuses

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[2] The Pulliam decision appeared to indicate that there may be instances in which it would be constitutional for a judge to incarcerate a person prior to trial on a non-jailable offense. See Allen v. Burke and Pulliam, 104 S.Ct. at 1973, n.2 (when a person is a danger to himself or others only so long as the danger persists). In addition, if the statutory requirements are met for detaining a juvenile in a secure facility, I believe that the juvenile would be detained for reasons other than "solely based on an inability to make bail."

to accept the child or cannot be located and the child is charged with a delinquent act, then the officer must take the child to Court directly. 10 Del.C. § 933. Instead of taking the child in custody, the police officer could, in appropriate cases (for a misdemeanor in which it was lawful to arrest the offender without a warrant), issue a summons pursuant to 11 Del.C. § 1907 for an appearance in court at a later date. The remarks in the summons could state that the child and legal custodian must both appear in court at a later date. Police officers are encouraged to utilize this alternative in all appropriate cases, since it diminishes the difficulties faced by the police agencies and the Justice of the Peace Court.

2. Release to Parent/Custodian's Custody - I recognize that you may have difficulties persuading parents or person/relative who is willing to take responsibility for the child (particularly if they are located in another state) to come to the court in the middle of the night to take custody of their child. One incentive which may be persuasive is the possibility that the Family Court might order the parent to pay the cost of placing their child in a nonsecure detention facility pursuant to 10 Del.C. § 936A(i). (COST PER CHILD PER NIGHT: Camelot, $82.00; Child Inc., $108.00; and YWCA (girls only) $173.00.)

3. Release on O.R. or Unsecured Personal Appearance Bond Signed by the Child - Section 936A of Title 10 of the Delaware Code clearly states that a child charged with delinquency may be released on the child's own recognizance or on bail. When this is read in conjunction with the language of 10 Del.C. § 933 (that a child whose custodian cannot be located must be brought to Court directly "for disposition"), it is evident that the statute envisioned the disposition of a child prior to adjudication without the presence of the child's custodians. If possible, the child's custodian should be present at the Justice of the Peace initial presentment.[3]

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[3] Generally, an infant appears and defends actions by a guardian. Cf. King v Cordrey, Del. Super., 177 A. 303, 307 (1935); Victor B. Woolley, Practice in Civil Actions, Vol. I, section 125, 79 (1906). However, Delaware courts have held that a guardian ad litem did not have to be appointed at the inception

However, in my view, the presence of the child's custodian is not necessary for the disposition of a child prior to adjudication by a Justice of the Peace, particularly given the unusual circumstances (i.e., the unlikelihood of locating a guardian ad litem on a weekend or during the middle of the night). Further, in contrast to ordinary contracts, juveniles are legally bound by bonds or recognizances executed by them. Cf. 43 C.J.S. Infants § 178 (1978)("a bond or recognizance executed by an infant to avoid imprisonment or to procure his release therefrom is by most authorities held binding on him"); 42 Am.Jr. 2d Infants § 64 (1969)("[i]f an infant executes a deed or a contract which it is his legal duty to execute, and which he can be compelled to execute by suit at law or in equity, it is absolutely binding upon him"); J.G. Pierce Co. v. Wallace, Mass. Supr., 146 N.E. 658, 659 (1925). A personal appearance bond, when executed by both the Justice of the Peace and the juvenile, constitutes a court order which is legally binding on the juvenile. An additional inducement to ensure the appearance of the juvenile at the court hearing is to take and hold the juvenile's driver's license pursuant to 11 Del.C. § 2106. [The driver's license would be forwarded, along with the original papers, to Family Court so that the license may be returned at the hearing in Family Court.]

4. Release to Nonsecure Detention Facilities - The juveniles may be placed in a nonsecure detention facility. The Department of Services for Children, Youth and Their Families has contracts with Camelot as a nonsecure detention facility for juveniles in New Castle County (a minimum of 20 beds and additional beds may be obtained as required) and with Child, Inc. in Kent and Sussex Counties (4 beds). Pursuant to the Department's contract with Camelot, Camelot personnel will pick up juveniles in Kent and Sussex Counties. The contact for nonsecure detention facilities in Kent and Sussex County is Stevenson House. There is a Department staff person on call 24 hours a day to resolve problems which occur. If you have problems, ask Stevenson House to

---

of a case, where there was no showing of actual harm to the child by the omission of a guardian ad litem in a civil case. Burton v. Wamples, Del. Ct. Err. & App., 3 Houst. 458, 461 (1867).

contact Rick Shaw or his designee. Please recognize that it will take some time for the juvenile to be picked up by Camelot personnel and, if possible, the juvenile could remain at Stevenson House for a limited period of time until the juvenile is picked up by Camelot personnel. (Since it is appropriate for the juvenile to execute the bond, it is not necessary that the representative of the nonsecure detention facility also execute the bond.) Please let me know of those instances (date, time and number of juveniles) in which juveniles must be transported to Camelot from Kent and Sussex Counties. This information will help determine if additional beds in nonsecure detention facilities are needed on a regular basis in Kent and Sussex Counties.

PWG:lba
Attachment.

cc: The Honorable E. Norman Veasey
The Honorable Andrew G.T. Moore, II
The Honorable Henry duPont Ridgely
The Honorable Vincent J. Poppiti
The Honorable Arthur F. DiSabatino
The Honorable Alfred Fraczkowski
The Honorable Charles M. Oberly, III
Lawrence M. Sullivan, Esquire, PD
Richard Shaw, YRS, DSCYF
Thomas W. Nagle
Anna A. Lewis
H. John Betts
Justice of the Peace Clerks of Court
All Police Agencies
Alderman's Courts
Law Libraries: New Castle County, Kent County, Sussex County & Widener University School of Law
Digilaw, Inc.

CHECKLIST FOR PRE-TRIAL DETENTION OF A JUVENILE IN A SECURE DETENTION FACILITY

ALTERNATIVE OPTIONS TO CONSIDER	YES	NO
1. SHOULD THE CHILD BE RELEASED ON OWN RECOGNIZANCE?		
2. SHOULD THE CHILD BE RELEASED TO THE CHILD'S PARENTS, GUARDIAN OR CUSTODIAN?		
3. SHOULD THE CHILD BE RELEASED ON BAIL?		
4. SHOULD THE CHILD BE RELEASED WITH RESTRICTIONS ON THE CHILD'S MOVEMENT, ACTIVITIES, ASSOCIATIONS, AND/OR RESIDENCE?		
5. SHOULD THE CHILD BE RELEASED TO A NONSECURE DETENTION ALTERNATIVE?		
6. IS THERE ANY MEANS TO REASONABLY ASSURE THE ATTENDANCE OF THE CHILD AT THE SUBSEQUENT COURT HEARING WHICH IS LESS RESTRICTIVE THAN A SECURE DETENTION FACILITY?		

IF ANY OF THE RESPONSES TO #1 - #6 IS YES, PRE-TRIAL SECURE DETENTION IS NOT APPROPRIATE. IF ALL OF THE RESPONSES TO #1 - #6 ARE NO, PROCEED TO THE FOLLOWING QUESTIONS:

FACTORS	YES	NO
7. IS THE CHILD A FUGITIVE FROM ANOTHER JURISDICTION ON A DELINQUENCY PETITION?		
8. IS THE CHILD CHARGED WITH A FELONY?		

YES NO

9. IS THE CHILD CHARGED WITH ONE OF THE FOLLOWING MISDEMEANORS:

Assault in the third degree?

Unlawful imprisonment in the 2nd degree?

Vehicular assault in the 1st degree?

Indecent exposure in the 1st degree?

Unlawful sexual contact in the 1st degree?

Carrying a concealed dangerous instrument?

10. HAS THE CHILD DEMONSTRATED A PATTERN OF REPEATED FAILURE TO COMPLY WITH COURT-ORDERED PLACEMENT IN A OUT-OF-HOME RESIDENTIAL OR FOSTER CARE SETTING?

IF ANY OF THE RESPONSES TO #7 - #10 IS YES, (AND ALL OF THE RESPONSES TO #1 - #6 ARE NO) IT IS APPROPRIATE TO ORDER THE CHILD TO A SECURE DETENTION FACILITY UNTIL THE NEXT SESSION OF THE FAMILY COURT.

Specific Factual Reasons for Ordering Pre-Trial Detention in a secure facility:

JUSTICE OF THE PEACE: _____

DATE: _____

STATE OF DELAWARE
THE COURTS OF THE JUSTICES OF THE PEACE
820 NORTH FRENCH STREET, 11TH FLOOR
WILMINGTON, DELAWARE 19801

NORMAN A. BARRON
CHIEF MAGISTRATE

TELEPHONE: (302) 571-2485

MEMORANDUM

TO: ALL JUSTICES OF THE PEACE
STATE OF DELAWARE

FROM: NORMAN A. BARRON
CHIEF MAGISTRATE

DATE: JUNE 11, 1984

RE: INCARCERATION OF PERSONS FOR NON-INCARCERABLE OFFENSES

Legal Memorandum 83-111, dated June 10, 1983, dealt with the above-referenced matter. You will recall that the Virginia Magistrate, Gladys Pullian, had been ordered to pay over $7,000 in attorneys fees because she had jailed a defendant in default of bail when the underlying offense carried no jail sentence. The United States Supreme Court recently upheld the fee award. See the attached New York Times article.

Judicial immunity is a thing of the past. In light of the Supreme Court's opinion, you must be extremely careful in your handling of arraignments, bail settings, the taking of guilty pleas and sentencings.

I have been troubled to see several cases where the Jurisdictional Form was not executed by the defendant who was later tried and convicted in a Justice of the Peace Court, or where the Record of Guilty Plea and/or Waiver of Counsel Forms were unexecuted by the defendant in cases where the defendant entered a plea of Guilty/*Nolo Contendere* in a Justice of the Peace Court. These omissions must cease, if not for the defendant's sake, then for yours!

As sad as it may seem, you must assume that there are attorneys out there ready to pounce on such cases contending a violation of their clients' civil rights. Be careful and thorough and you will never be named as a defendant to a civil rights suit for injunctive relief.

NAB:pn

Attachment

cc: Files

Supreme Court Roundup

Ruling Says State Judges May by Sued in Civil Rights C

Special to The New York Times

WASHINGTON, May 14 — The Supreme Court ruled today that state judges may be sued for civil rights violations and may be ordered to pay the lawyers' fees of those who sue them successfully.

While the 5-to-4 decision permitted only suits for injunctions, not damages, it marked a significant retreat from the doctrine of absolute judicial immunity to which the Court has long adhered.

Six years ago, for example, the Court ruled that a judge who had ordered a young woman to be sterilized without her knowledge or consent was absolutely immune from the woman's subsequent damage suit.

The decision today, written by Associate Justice Harry A. Blackmun, removed the bar against suits for damages. But the dissenters, in an opinion by Associate Justice Lewis F. Powell, argued that there was little practical difference, from the point of view of a judge's pocketbook, between a damage suit and an order to pay lawyers' fees.

The decision upheld a ruling by the United States Court of Appeals for the Fourth Circuit, in Virginia, ordering a state magistrate to reimburse two men for $7,000 in lawyers' fees.

The two men were arrested for petty offenses for which they could not have received a jail sentence. However, the magistrate jailed them because they could not make bail. The men sued in Federal court for a declaration that it was unconstitutional to require bail for non-jailable offenses and for an injunction against the continuation of the practice. They won and were awarded lawyers' fees under the Civil Rights Attorney's Fees Awards Act of 1976, which provides that prevailing parties in civil rights suits can recover their lawyers' fees from the losing party.

Technically, the only question before the Court was whether, in passing the 1976 law, Congress intended to make judges liable for lawyers' fees. But to decide that question, the Court first had to decide whether a state judge could be subject to a civil rights suit for an injunction in the first place.

Suit Used 1871 Rights Act

The suit against the Virginia magistrate was brought under the Civil Rights Act of 1871, one of the most widely used Federal civil rights laws. Usually referred to as Section 1983, this law permits suits for damages or injunctive relief against those who, "under color of state law" violate an individual's civil rights.

In his opinion, Justice Blackmun reviewed the history of judicial immunity in English common law, from which the American immunity doctrine is derived. He concluded that because English judges were subject to certain common-law writs much like modern-day injunctions, there was no historical basis for extending judicial immunity to injunctive suits.

Justice Blackmun also said there was no evidence that Congress meant to exclude judges from injunctions under Section 1983.

His opinion, Pulliam v. Allen, No. 82-1432, was joined by Associate Justices William J. Brennan Jr., Byron R. White, Thurgood Marshall and John Paul Stevens.

In his dissenting opinion, Justice Powell said the majority opinion "in effect eviscerates the doctrine of judicial immunity." Subjecting judges to "the ever-present threat of burdensome litigation," he said, threatened judicial independence. Chief Justice Warren E. Burger and Associate Justices William H. Rehnquist and Sandra Day O'Connor joined the dissent.

The Court dealt with these other matters today:

Jury Challenges

For the second time in a year, the Court refused to consider the question of whether a black defendant's rights are violated by the prosecution's use of

STATE OF DELAWARE
JUSTICE OF THE PEACE COURTS

FAMILY COURT BUILDING
22 THE CIRCLE, SUITE 120
GEORGETOWN, DELAWARE 19947
TELEPHONE: (302) 856 - 5871

PATRICIA WALTHER GRIFFIN
CHIEF MAGISTRATE

820 N. FRENCH STREET
11TH FLOOR
WILMINGTON, DELAWARE 19801
TELEPHONE: (302) 577 - 8162

LEGAL MEMORANDUM 92-191 (3RD SUPPLEMENT)

TO: ALL JUSTICES OF THE PEACE
STATE OF DELAWARE

FROM: PATRICIA W. GRIFFIN
CHIEF MAGISTRATE

DATE: MAY 11, 1998

RE: NOTIFICATION OF CUSTODIAN BY COURT

This Memorandum is intended to supplement Legal Memorandum 92-191 (2nd Supplement) with regard to notification of a child's custodian.

Notification of Custodian by Court Prior to Proceeding

As mentioned in the earlier memorandum, 10 *Del.C.* § 1004 (previously § 933) requires the police to immediately attempt to notify a child's custodian when the child is taken into custody. In addition, Family Court Rule 5 (b)(2) requires that, if the child's custodian is not present when the child is brought before the Court, the Court shall immediately attempt to notify the child's custodian of the child's presence and the reason for being there. Family Court Rule 5(b)(2) states in pertinent part:

> Duties of other courts. Upon a child being brought before a court other than this Court by a peace officer, such court shall immediately attempt to notify the child's custodian of the child's presence and the reason for being there...

There may be situations in which the Court can convince a custodian of the seriousness of the situation and obtain their appearance, when the police cannot. Therefore, I would suggest that an attempt to notify the custodian be made by the Judge regardless of whether or not the police have previously succeeded in contacting the custodian.

It is important to recognize that **a reasonable attempt to notify the custodian, rather than the actual presence of the custodian is required before proceeding.** What is a reasonable attempt? *Palmer v. State*, Del. Supr., 626 A. 2d 1358 (1993), gives some guidance in answering this question. In that case, the Delaware Supreme Court found that the failure of the police to attempt to notify Palmer's custodian violated his constitutional rights. Although that case dealt with notification by the police, it is also instructive about notification attempts by the Court.

After Palmer was arrested, he provided the police with his name, address and age. There was conflicting testimony as to whether he provided the police with his grandmother's phone number. The opinion describes the following arguments made by the State as to why the police did not notify the custodian:

> The State advances several arguments to justify the failure of the police to attempt to notify Palmer's custodian of his arrest. First, the State claims that the police simply did not believe that Palmer was a minor because he appeared to be much older and he was acting suspiciously. Second, the State claims that the police were too busy with their investigation to attempt to notify Palmer's custodian. Third, the State claims that the police could not notify Palmer's custodian of his arrest because their computer system, which would have allowed the police to check Palmer's biographical information via the New York Police Department's computer, was not operating. Finally, the State claims that the inability of the police to notify Palmer's custodian was the result of Palmer's failure to provide the police with his grandmother's phone number.

Palmer, 626 A. 2d at 1362.

However, in finding that the police had not made a reasonable attempt to notify Palmer's custodian, the Court stated:

> In light of the unambiguous language in § 933 [currently 10 *Del. C.* § 1004] and Rule 5(b) and the important policy considerations which underlie these requirements, the excuses offered by the State do not justify the failure of the police to attempt to notify Palmer's custodian of his arrest.
>
> The fact that a minor appears to be of an older age, or acts "suspiciously," cannot justify a failure to comply with the clear mandate of § 933 and Rule 5(b). Section 933 states that a "peace officer may take into custody a child he believes to be dependent, neglected or delinquent...having taken such a child into custody [the peace officer] *shall immediately* notify the child's custodian." 10 *Del.C.* § 933 (emphasis added). Rule 5(b) is equally emphatic in its requirement that "[a]ny peace officer who takes a child into custody *shall immediately*

attempt to notify the child's custodian." Fam. Ct. R. 5(b) (emphasis added). While notification and presentment are not required if the police have no reason to believe that the person in custody is a minor, it is a clear violation of § 933 and Rule 5(b) where, as here, the police fail to attempt to notify the minor's custodian after the person under arrest claims to be minor. In such circumstances the subjective belief of the police is not controlling.

The State's claim that the police were too busy investigating the shooting to attempt to notify Palmer's custodian of his arrest does not excuse the failure to notify. A reasonable attempt to notify Palmer's custodian would have involved one person, not necessarily an investigating police officer, and would not have required a substantial amount of time. Given the clear notice requirements of § 933 and Rule 5(b), the State's argument that the police were too busy is not persuasive.

The State's claim that the police could not notify Palmer's custodian of his arrest because their computer system was inoperative also fails to excuse the failure to notify. Alternative means of communication, such as telephoning New York authorities to verify Palmer's age, were not considered. The police simply assumed Palmer was lying and proceeded with their interrogation on that assumption.

Finally, the State's claim that the inability of the police to notify Palmer's custodian was the result of Palmer's failure to provide the police with his grandmother's phone number is equally unavailing. While it is true that if Palmer's intransigence prevented the police from notifying his custodian he could not have his statement suppressed on that basis, *In re Hector C.*, N.Y. Fam. 95 Misc.2d 255, 406, N.Y.S. 2d 958, 960 (1978), that is simply not the case here. Even if Palmer failed to give the police his grandmother's phone number, as he claims, he did provide true identification, including age, correct name and address. Thus, it cannot be said that Palmer acted to frustrate police efforts to verify his age.

In light of the forgoing, we are unable to conclude that the police complied with the notification requirement of § 933 and Rule 5(b).

Palmer, 626 A. 2d at 1362.

Notification of Custodian following Justice of the Peace Court Disposition

Finally, you should be aware that 10 *Del.C.* § 1005(b)(4) requires that the Court notify the custodian, if an address is known, of the child's having been taken into custody, the reason therefor, and the disposition of the matter. This section states:

> (b) Any judge of any court of this State, including justices of the peace and local aldermen, before whom a child is brought by a peace officer:

(4) Shall notify the person having the care of the child, if an address be known, of the child's having been taken into custody, the reason therefore, and the disposition of the matter;

Therefore, if the custodian is not present when the child is brought before the Court, the Judge should contact the child's custodian to tell them that the child has been brought before the Court, the reason, and what action the Court took with regard to the child, (i.e., whether the child was released on own recognizance, bonded, placed in a nonsecured or secured facility). If no telephone contact is made, the Judge should provide this information by mail (perhaps in the form of a copy of the bond), to the child's custodian, if an address can be found. A reasonable effort should be made to find the custodian's address.

PWG/crm

cc: Honorable E. Norman Veasey
Honorable Randy J. Holland
Honorable Henry duPont Ridgely
Honorable Alex J. Smalls
Honorable Vincent J. Poppiti
Honorable Alicia Howard
Keith R. Brady, D.A.G.
All Delaware Police Agencies
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LEGAL MEMORANDUM 92-191 (Revision)

(THIS LEGAL MEMORANDUM ADDS SPECIAL DOMESTIC VIOLENCE BAIL GUIDELINES TO THE GENERAL BAIL GUIDELINES CONTAINED IN LEGAL MEMORANDUM 92-191(JULY 13, 1992) AND RESCINDS AND REPLACES LEGAL MEMORANDUM 92-191 (SUPPLEMENT, MAY 11, 1994))

TO: **ALL JUSTICES OF THE PEACE**

FROM: **HON PATRICIA W. GRIFFIN**
CHIEF MAGISTRATE

RE: **HANDLING OF DOMESTIC VIOLENCE CASES**

DATE: **SEPTEMBER 4, 2003**

Previous legal memoranda have provided guidance in specific areas of handling domestic violence cases. This legal memorandum and summary attempts to draw from those memoranda, as well as other sources, to provide a more comprehensive guide to the handling of domestic violence cases in the Justice of the Peace Court. The steps which should be taken and the issues to be considered are outlined below starting with a defendant's initial appearance in the Justice of the Peace Court. A summary of domestic violence procedures in the Justice of the Peace Court is attached.

For your convenience, the following are attached at the end of this Memorandum:

- a summary of the considerations in a domestic violence case is attached at the end of this Memorandum;
- a copy of the domestic violence screening criteria checklist to help determine whether a victim is in immediate danger; and
- a list of programs which provide domestic violence counseling

INITIAL STEPS

1. Determining whether the charges involve domestic violence.

In determining whether the charges involve domestic violence, the broad definition of family violence[1] given in *Legal Memorandum 92-191 (Supplement) Screening Criteria for Domestic Violence Cases* should be used. Under this definition, you should consider a case to involve domestic violence based on the relationship of the victim and defendant and the offense involved – both of which are broadly defined. The applicable relationships and offenses are:

a. Included relationships:

- Family members as defined by 10 *Del.C.* § 901[2], but without regard to state of residence;
- Persons within the following degree of relationship: cousin, niece, nephew, aunt, or uncle, whether such relationship is by blood, marriage, or adoption, and without regard to legitimacy;
- Ex-husband/wife;
- Current or former intimate cohabitants;
- Boyfriend/girlfriend or ex-boyfriend/girlfriend[3];
- Another individual who has a relationship with the defendant's significant other

---

[1] [T]he defendant or victim in a family violence case may be male or female, child or adult, or may be of the same sex. Family violence is any criminal offense or violation involving the threat of physical injury or harm; act of physical injury; homicide; sexual contact, penetration or intercourse; property damage; intimidation; endangerment; and unlawful restraint. The victim and defendant may be family members as defined in 10 *Del.C.* § 901(a), ex-husband/wife, intimate cohabitants or former intimate cohabitants, boyfriend and girlfriend or ex-boyfriend and girlfriend. Family violence shall also include the above criminal offenses and violations in which the defendant victimizes another individual who has a relationship with the defendant's significant other. *Legal Memorandum 92-191 (Supplement)* at 2.

[2] See section 3 below for the definition used in 10 *Del.C.* § 901.

[3] Same sex relationships are also included in the definition.

b. Included offenses:

- Any offense involving physical injury or harm or the threat of physical injury or harm, including intimidation, endangerment and unlawful restraint;
- Sex offenses; and
- property damage.

The definition of domestic violence used above should be used for your initial assessment of the case for purposes of setting bail. It includes a broader definition of relationships than the definition of "family" used to determine whether a case is in the criminal jurisdiction of Family Court.[4] It also more broadly defines included relationships and offenses than do two of the statutes discussed below. (11 *Del.C.* §3906 (requiring a psychosocial assessment for second offenders) and 11 *Del.C.* §1448 (determining when a person is prohibited from possessing a deadly weapon)). In terms of relationships, it includes boyfriend/girlfriend relationships, family members not living together, and individuals with whom the victim has a relationship.

In terms of offenses, property damage, as well as physical violence, may be considered as part of this broad definition of domestic violence as "[b]atterers often damage property to terrorize, threaten, and exert control over a victim of domestic violence."[5] Thus, in some circumstances, property damage may be indicative of a situation in which a victim is at risk of immediate and present danger. Killing or injuring an individual's or a jointly owned pet should be included within this definition since studies show a relationship between animal abuse and domestic violence. *See, e.g. The Link Among Animal Abuse, Child Abuse, and Domestic Violence*, Trollinger, Melissa, Colorado Lawyer (Sept. 2001).

2. **Determining whether the victim is in immediate and present danger from the defendant**

a. Using the domestic violence screening criteria checklist.

In order to determine whether the victim is in immediate and present danger from the defendant, a justice of the peace should use the new

[4] The civil protection from abuse order statute provides for broader Family Court jurisdiction than do the Family Court criminal jurisdiction statutes, and so is closer to the definition described above than is Family Court's criminal jurisdiction. Under the protection from abuse statutes, Family Court jurisdiction includes, in addition to those persons covered by its criminal jurisdiction, parties who are former spouses, a man and a woman cohabiting together with or without a child of either or both, or a man and a woman living separate and apart with a child in common.

[5] *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 Hofstra L. Rev. 801, Orloff, E. (1993).

domestic violence screening criteria checklist attached to this legal memorandum. (This supersedes the domestic violence screening checklist which was contained in *Legal Memorandum 92-191 (Supplement) Screening Criteria for Domestic Violence Cases.*)

If the answer to any of the questions on the checklist is "yes", you should consider the possibility of immediate and present danger to the victim and keep this in mind in setting bail. Obviously, the more positive "yes" responses on the checklist, and the more serious the factors which are present, the more concern there should be. The checklist serves as a guideline and is not exclusive. You should also consider additional factors which raise concerns.

b. Obtaining information for use in the screening checklist from as many sources as available.

While there is no magic formula for assessing the risk to a victim of domestic violence, the more information you have about the situation, the more informed a decision you can make. In many instances, it may be difficult to obtain the necessary information. However, you should do your best to attempt to obtain the necessary information by seeking it from as many sources as available, including the police officer who investigated the domestic violence complaint, the victim (if available), the defendant's criminal history, and any other person who is available and has pertinent information.

Police officers are strongly encouraged to fill out the information on the screening criteria checklist (and obtain information from the victim) since the information contained on the checklist is frequently critical in determining the severity of the problem. The checklist is particularly critical when the officer appearing in court is not the arresting officer. In that situation, the checklist can be used to pass on information to the officer appearing before the court. Because victims are rarely at the defendant's initial appearance, this information is crucial to the judge in setting bail. It is also important in the sentencing process, particularly, when the victim does not appear in court.

3. <u>Determining whether the case is a Family Court matter</u>.

The judge will also need to determine whether this is a Family Court matter. To this end, the judge should ask specific questions of the defendant and victim (if available), as well as consider the officer's assessment as to the proper jurisdiction. A case belongs in Family Court if the relationship of the parties

PRE-TRIAL RELEASE WHEN THE VICTIM IS IN IMMEDIATE AND PRESENT DANGER

Special consideration should be given in setting the bail and conditions of release when an alleged victim of domestic violence is in immediate and present danger.

1. Setting bail.

The special domestic violence bail guidelines listed below should be used:

BAIL GUIDELINES FOR OFFENSES INVOLVING DOMESTIC VIOLENCE

The domestic violence screening criteria checklist should be used in determining the degree of risk to a victim for purposes of setting bail. Prior domestic violence (or other violent crime) arrests, even when there was no conviction, may be considered in determining the history of domestic violence for the checklist. Any prior domestic violence conviction for the defendant should generally make you consider the victim to be at high risk. The following guidelines supersede existing general bail guidelines contained in Legal Memorandum 92-191 (July 13, 1992) (and, with regard to violation of a protective order, supersede the guidelines in Legal Memorandum 92-191 (Supplement, May 11, 1994).

Violation of protective order

$1,000 – 5,000 Cash Only

Other Domestic Violence Offenses
(See attached Domestic Violence Checklist)

Moderate Risk[6]

For other offenses, if the domestic violence checklist leads you to believe that the victim is at moderate risk of being in immediate danger, the normal bail guidelines are tripled and secured bail should be set.

[6] The determination of whether the victim is at moderate or high risk is a subjective decision on the part of the judge based on the information obtained from the domestic violence checklist. The more considerations which are present (the more "yes" responses to the screening criteria), the more likelihood there may be of high risk to the victim. In addition, evidence of previous threats of homicide or bodily harm by the defendant , prior serious incidents of domestic violence, or indications of escalating violence are likely to alone point to a high risk. However, a judge may use his or her discretion to find that the victim is at high risk based on any factor or combination of factors, as indicated by the facts of the specific case.

meets the definition of "family" as defined in 10 *Del.C.* § 901. That definition states:

> "Family" means husband and wife; a man and woman cohabiting in a home in which there is a child of either or both; custodian and child; or any group of persons related by blood or marriage who are residing in 1 home under 1 head or where 1 is related to the other by any of the following degrees of relationship, both parties being residents of this State:
>
> a. Mother;
> b. Father;
> c. Mother-in-law;
> d. Father-in-law;
> e. Brother;
> f. Sister;
> g. Brother-in-law;
> h. Sister-in-law;
> i. Son;
> j. Daughter;
> k. Son-in-law;
> l. Daughter-in-law;
> m. Grandfather;
> n. Grandmother;
> o. Grandson;
> p. Granddaughter;
> q. Stepfather;
> r. Stepmother.
>
> The relationships referred to in this definition include blood relationships without regard to legitimacy, and relationships by adoption.

If the relationship and residence of the defendant and victim meet the above criteria, the case should be sent to Family Court. If the relationship and residence of the victim and defendant do not meet the above definition of Family, but do meet the general definitions for domestic violence described in section 1 above, and the offense is within the jurisdiction of the Justice of the Peace Court, the case should be handled as a domestic violence case in the Justice of the Peace Court (unless transferred to the Court of Common Pleas).

High Risk

If the domestic violence checklist leads you to believe that the victim is at high risk of immediate danger, the guidelines are triple the normal amount and cash only bail should be required.

Discretion of the Judge

As always in setting bail, the judge may use his or her discretion, based on the circumstances of the case, to set bail outside the bail guidelines listed above.

2. Setting Conditions of Release

When the victim is in immediate and present danger, the defendant should not be committed or released without the setting of appropriate conditions, which should include a no contact order. The judge should explain that the no contact order means no contact at all, even if the contact is initiated by the victim or the contact is indirect, such as a phone call.

It is important to remember that a no contact order should be issued even if the defendant is already subject to a no contact order based on prior charges. If a no contact order is not issued under those circumstances and the prior charges are *nolle prossed*, the existing no contact order will be terminated. Similarly, a no contact order should also be issued even if the defendant is under an existing Protection From Abuse Order.

The standard No Contact/Conditions of Release form should be used for issuing a no contact order. (The judge should be sure to ask the clerk to have the computer system print out a no contact order in any domestic violence case.)[7]

The conditions remain in effect until they are changed or withdrawn by a court. No language should be added to the no contact order setting the conditions to terminate at the next appearance at another court. That type of language requires that the alleged victim act to ensure that no contact provisions remain in place. Instead of limiting the duration of the no contact provisions, it is appropriate to be sure that the defendant understands that he or she can request a hearing at the appropriate court to modify the conditions. *Policy Directive 97-166 (December 15, 1997).*

In addition to a no contact order, the Court may, in appropriate situations, impose any other conditions of release as provided in 11 *Del.C.* § 2108. Among the additional conditions which a judge may wish to consider imposing, in appropriate circumstances, are:

[7] The no contact order should generally be available in the system for any offense if the clerk checks "yes" when the computer system asks if the user wants a no contact order.

- Relinquishing firearms and other deadly weapons to the arresting officer (11 *Del.C.* § 2108(a)(10) – catchall provisions
- Placing restrictions on the travel, associations, activities, consumption of alcoholic beverages, drugs, or barbiturates, or place of abode (apart from the no contact order) during the period of release (11 *Del.C.* § 2108(a)(4)); and
- Requiring psychiatric or medical evaluation or treatment (11 *Del.C.* § 2108(a)(7)). This would generally be appropriate only when the case is one which will be staying in the Justice of the Peace Court. Pre-trial services should be contacted if evaluation or treatment is ordered to ensure compliance. The bond should clearly state the condition that the defendant be on pretrial supervision and should provide the pretrial contact information so that the defendant knows how to get in touch with pretrial services. The bond should be faxed to pretrial services and it is also helpful to e-mail the contact person to alert them that a fax has been sent. Fax and phone numbers for pretrial services are as follows:

  New Castle County
  Fax: 577-2108 (attention: Loretta Simpson)
  Phone: 577-3443

  Kent County
  Fax: 739-6198 (attention: Michelle Williams)
  Phone: 739-5387

  Sussex County
  Fax: 854-6938 (attention: Lisa Hudson)
  Phone: 854-6994

  In some situations, an opening for the person for evaluation or treatment may not arise prior to trial. In that situation, the condition for evaluation or treatment may be made a condition of probation.

INITIAL CONSIDERATIONS IN HANDLING A DOMESTIC VIOLENCE CASE IN THE JURISDICTION OF THE JUSTICE OF THE PEACE COURT

At an arraignment, in a case under Justice of the Peace Court jurisdiction, when the defendant has been brought forthwith, or if you find that the victim is in immediate and present danger, you should seriously consider deferring the taking of a guilty plea, or, if you take the guilty plea, deferring sentencing on the plea. Factors which should be considered in deciding whether to defer taking the guilty plea and/or sentencing the defendant include:

- The need to provide the victim with an opportunity to be present at sentencing. *See* 11 *Del.C.* § 9407 (Under § 9407, which is part of the Victim's Bill of Rights, the victim shall be notified of court proceedings, unless the victim requests otherwise and the victim has a right to be present at such proceedings unless good cause is shown to exclude the victim.[8]) This is magnified when sufficient evidence concerning the domestic violence has not been provided to the Court at the initial appearance; and
- The need to obtain additional information such as the extent of the victim's injuries, cost of restitution, recommendations from a probation officer, if the defendant is on probation, or from the victim or other sources.

SENTENCING IN A DOMESTIC VIOLENCE CASE IN THE JUSTICE OF THE PEACE COURT

In sentencing in a domestic violence situation, the following concerns are important to remember:

A. Special SENTAC guidelines for domestic violence cases.

SENTAC sentencing guidelines for domestic violence cases are higher than those for general violent misdemeanors. While the SENTAC sentencing guideline for a violent misdemeanor is up to 12 months at Level II, **it is up to 1 month at Level V for domestic violence misdemeanors.**

[8] Pursuant to 11 *Del.C.* § 9411(b), such notice to the victim is the responsibility of the Attorney General's Office.

B. Placing the defendant on probation.

In a domestic violence situation, a period of probation pursuant to 11 *Del.C.* § 4333 should generally be imposed[9]. Usually, the period of probation will be for a longer period of time than any sentence which is suspended in order to provide sufficient time for the defendant to fulfill required counseling and any other conditions which are ordered while on probation. For example, if the charge is an unclassified misdemeanor offensive touching under 11 *Del.C.* § 601(a)(1), the maximum period of incarceration would be 30 days (11 *Del.C.* §4206(c)). In a domestic violence situation in which the victim is in immediate and present danger, you may decide to impose the 30 day incarceration period and suspend it for up to one year of probation as permitted by 11 *Del.C.* § 4333 (which provides that the total period of probation or suspension of sentence may not exceed the period of commitment provided by law or one year, whichever is greater).

C. Setting conditions. In domestic violence situations, it is generally appropriate or required by law to impose special conditions of probation/sentence as described in 11 *Del.C.* § 4204(b)(8) such as attending counseling or completing a psychosocial assessment.

1. Counseling – a convicted defendant should generally be ordered to counseling. **Special domestic violence counseling, rather than general counseling or anger management counseling, should be ordered.** Probation and Parole will provide the defendant with information as to where to attend counseling and will monitor attendance.

2. No contact order. A no contact order should generally be entered on the sentencing order as a condition of probation, unless not appropriate for the particular circumstance of the case. The judge should explain that the no contact order means no contact at all, even if the contact is initiated by the victim or the contact is indirect, such as a phone call.

It is important to remember that a no contact order should be issued even if the defendant is already subject to a no contact order based on prior charges. If a no contact order is not issued under those circumstances and the prior charges are nolle prossed, the existing no contact order will be terminated. Similarly, a no contact order should also be issued even if the defendant is under an existing Protection From Abuse Order.

[9] Although recent revisions to 11 *Del.C.* § 4204 permit ordering conditions without a period of probation or suspension of sentence, this would generally not be appropriate in domestic violence cases and a period of probation (not to exceed one year) should be imposed.

3. Requiring a psychosocial assessment. 11 *Del.C.* § 3906 requires a psychosocial assessment and adherence to all recommendations made in the completed assessment to be ordered as part of the sentence in certain situations involving a second[10] domestic violence offense whether or not you have found the victim to be in immediate and present danger. **However, it is important to remember that you may require a psychosocial assessment <u>whenever</u> you believe that it may be necessary whether or not required by the statute and whether or not this is a second or later offense.** Probation and parole should direct the defendant to the proper organization to conduct the assessment and monitor the defendant's compliance.

The criteria as to when a psychosocial assessment and follow-up are required are described below. In many instances, however, it may be difficult to obtain the necessary information to determine whether these criteria have been met. In those instances, a judge may wish to order a psychosocial assessment and compliance with resulting recommendations as a condition of probation when he or she believes a psychosocial assessment is warranted even though the judge is not certain that one is required by the statute

Section 3906 **REQUIRES** a psychosocial assessment to be ordered when the defendant is charged with **any of the following offenses** in the Justice of the Peace Court jurisdiction:

- Offensive Touching (11 *Del.C.* § 601);
- Menacing (11 *Del.C.* § 602)
- Reckless Endangering (11 *Del.C.* § 603)
- Assault third (11 *Del.C.* § 611);
- Terroristic Threatening (11 *Del.C.* § 621);
- Criminal Mischief (11 *Del.C.* § 811);
- Trespass with intent to peer or peep into a window or door of another (11 *Del.C.* § 820);
- Criminal Trespass Second (11 *Del.C.* § 822);
- Criminal Trespass First (11 *Del.C.* § 823);
- Endangering Children (11 *Del.C.* § 1107);
- Disorderly Conduct (11 *Del.C.* § 1301); or
- Harassment (11 *Del.C.* § 1311)

<u>AND</u> THE DEFENDANT AND THE VICTIM ARE:

- Former spouses;

[10] The statute does not provide a time limitation after which a prior offense is not counted.

- Co-habitants at the time of the offense and there are no children in the home;
- Divorced or single parents who are not living together but who have a child in common; or
- Family members as defined in 10 Del.C. § 901(9) and either the victim and/or the defendant are **not** a resident of Delaware.

AND THE DEFENDANT HAS PREVIOUSLY BEEN CONVICTED OF ANY OF THE FOLLOWING OFFENSES:

- 11 *Del.C.* §§ 601-792;
- 11 *Del.C.* §§ 801-829,
- 11 *Del.C.* §§ 1102-1114;
- 11 *Del.C.* § 1301;
- 11 *Del.C.* § 1311- 1312A

AND THE VICTIM AND THE DEFENDANT IN THE PREVIOUS CONVICTION WERE:

- Former spouses;
- Co-habitants at the time of the offense;
- Parents with a child in common; or
- Family members, as defined by 10 *Del.C.* § 901(9), but regardless of the state of residence of the parties.

Note: The statute does not require that the victim have been the same person in both offenses.

Examples of when the statute requires a psychosocial assessment:

- Donald Defendant was previously convicted of Assault Second (11 *Del.C.* § 612) against his wife Verna Victim. He is now charged with Assault Third (11 Del.C. § 611) of Verna, to whom he is no longer married. Verna is now a former spouse and she was a family member as defined by 10 *Del.C.* § 901(9) at the time of the first assault. Therefore, the statute applies.
- Peter Peeper was previously convicted of Unlawful Imprisonment Second (11 *Del.C.*§ 781) of Glenda, his girlfriend with whom he lived at the time. He is now charged with Trespass with Intent to Peer or Peep (11 *Del.C.* § 820) against Fran, his former spouse. The statute applies because the statute applies to both offenses and both relationships.

- Victor Vicious was previously convicted of Assault Third (11 Del.C. § 611) against his brother Bob. He is now charged with Menacing (11 Del.C. § 602) his sister Sarah. The statute applies because both victims were members of Victor's family.

D. Including a "person prohibited" statement in the sentencing order. Under 11 *Del.C.* §§ 1448, persons convicted of certain crimes are prohibited from purchasing, owning, possessing or controlling a deadly weapon or ammunition for a firearm within the State. Those crimes within the Justice of the Peace Court jurisdiction are: 1) Assault Third; and 2) in the context of a domestic violence situation only (as defined below), Offensive Touching, Menacing, Reckless Endangering, and Terroristic Threatening.

Whenever a conviction results in a person being a person prohibited, the judge should advise the defendant of this at sentencing and order the defendant to relinquish any firearms which he or she possesses and include the following statement in the sentencing order):

> *You are prohibited from purchasing, owning, possessing or controlling a deadly weapon or ammunition for a firearm for five years after this conviction pursuant to 11 Del.C. § 1448. You are ordered to relinquish any and all deadly weapons and ammunition forthwith.*

Probation and parole will be responsible for enforcing the order to relinquish, and can determine whether the defendant has already done so pursuant to any prior order to relinquish.

A justice of the peace must include the above statement in the sentencing order when the defendant is:

- Convicted of **Assault Third** (11 *Del.C.* § 611) (*see* 11 *Del.C.* § 1448(a)(1)) (without regard to the relationship between the victim and defendant); **OR**

- Convicted of **Offensive Touching** (11 *Del.C.* § 601); **Menacing** (11 *Del.C.* § 602); **Reckless Endangering** (11 *Del.C.*§ 603); or **Terroristic Threatening** (11 *Del.C.* § 621) (*See* 11 *Del.C.* § 1448(a)(7)) **AND THE VICTIM AND DEFENDANT ARE[11]:**

  - Former spouses

[11] The categories of relationships listed are based on the categories given in 11 *Del.C.* § 1448(a)(7), but excluding relationships which would make the case a Family Court matter and not under Justice of the Peace Court jurisdiction.

- Co-habitants at the time of the offense and there are no children in the home;
- Divorced or single parents who are not living together but who have a child in common;
- Family members as defined in 10 *Del.C.* § 901(9), and either the victim and/or the defendant are not a resident of Delaware.

It is also advisable to inform the defendant at the time of arraignment or before entering a guilty plea of the fact that conviction will lead to a "person prohibited" status. However, failure to do so does not render a guilty plea involuntary because "[a] defendant's loss of the future right to possess deadly weapons upon entry of certain guilty pleas is merely a collateral consequence of such a plea." *Kipp v. State*, 704 A. 2d 839 (Del. 1998).

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SUMMARY OF DOMESTIC VIOLENCE PROCEDURES IN THE JUSTICE OF THE PEACE COURT

HANDLING AN INITIAL APPEARANCE

A. Preliminary steps

- Determine whether the charges involve domestic violence – use the broad definition of domestic violence given at the beginning of the attached legal memorandum
- If the charges involve domestic violence:
  - determine whether the victim is in immediate and present danger from the defendant – use the domestic violence screening criteria checklist (to the extent that it is practicable to obtain the necessary information.)
  - determine which court has jurisdiction - use the definition of family in 10 *Del.C.* § 901 to determine whether Family Court has jurisdiction

B. Setting bail and conditions of release

If the victim is in immediate and present danger:

- use special domestic violence bail guidelines
- issue a no contact order and set any other appropriate conditions of release, such as relinquishing deadly weapons

HANDLING A DOMESTIC VIOLENCE CASE UNDER THE JURISDICTION OF THE JUSTICE OF THE PEACE COURT

A. Initial Considerations – If the defendant is brought forthwith and wishes to plead guilty in the Justice of the Peace Court, the taking of a guilty plea or sentencing should generally be deferred so that more information can be obtained from the victim and/or the victim can have an opportunity to be present.

B. Sentencing Considerations

- SENTAC guideline for DV misdemeanors is up to one month at Level V
- probation should ordinarily be imposed
- impose appropriate conditions, including no contact with victim and obtaining special domestic violence counseling (not anger management counseling)
- include a "person prohibited" statement and order the defendant to relinquish firearms in the sentencing order (pursuant to 11 *Del.C.* §1448) when the defendant has been convicted of:
  - assault third (without regard to the relationship); or
  - offensive touching, menacing, reckless endangering, or terroristic threatening and the victim and defendant fit within the relationships defined in 11 *Del.C.* § 1448 (except those in Family Court jurisdiction)
- require a psychosocial assessment and the completion of follow-up conditions in all situations required by 11 *Del.C.* § 3906 or where otherwise appropriate.

DOMESTIC VIOLENCE SCREENING CRITERIA CHECKLIST

The following questions relate to serious risk factors for domestic violence. If the victim is not present or the police do not present sufficient information, it will likely be impossible to obtain answers to many of these questions. When that occurs, the judge should do his or her best based on the available information.

CHECK ONE			QUESTION	COMMENTS
Y	N	NO INF.		
			Does DELJIS show that defendant has a history of other domestic violence (with the same or another victim)?	
			Does DELJIS show that defendant has a history of other violent crimes or violations of court orders?	
			Does defendant have a firearm or other weapon(s)?	
			Is the defendant unemployed? If so, why?	
			Does a child not related to the defendant live in the home?	
			Does defendant have a history of depression/mental illness/suicide attempts? If so, specify	
			Does defendant have a history of alcohol or drug abuse?	
			Has the victim recently ended the relationship/left the defendant/filed for divorce?	
			Does victim report that defendant has committed prior acts of domestic violence or threatened victim with homicide, serious physical injury or sexual abuse?	
			Has violence between defendant and victim been escalating?	
			Does victim think defendant is capable of killing victim? Why or why not?	
			Does defendant try to control behavior of victim?	
			Has defendant very recently killed or injured a pet?	

BATTERERS' INTERVENTION PROGRAMS

The following programs should be used for domestic violence counseling. (Normally the defendant will be sent to a specific program by Probation and Parole and the judge need only order that the defendant undergo domestic violence intervention counseling.)

Catholic Charities, Inc.
(New Castle County)
655-9624

CHILD, Inc.
(New Castle County)
762-8989

Dover Air Force Base Family Advocacy Program
(Kent County)
677-2711

People's Place II
(Sussex County)
424-2420